

**Executive Summary – Enforcement Matter – Case No. 48099**  
**Western Dairy Transport, L.L.C.**  
**RN101261097**  
**Docket No. 2014-0038-IWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

IWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Milk Transport Services, located at 771 County Road 176 (Smith Springs Road), approximately 0.25 mile northeast of the intersection of U.S. Highway 281 and County Road 176, north of Stephenville, Erath County

**Type of Operation:**

Bulk milk transport services terminal

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** June 13, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$15,946

**Amount Deferred for Expedited Settlement:** \$3,189

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$12,757

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - High

Site/RN - Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 48099**  
**Western Dairy Transport, L.L.C.**  
**RN101261097**  
**Docket No. 2014-0038-IWD-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** October 29, 2013

**Date(s) of NOE(s):** December 20, 2013

***Violation Information***

1. Failed to comply with permitted effluent limits for oil and grease maximum concentration and daily average flow [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Commission on Environmental Quality (“TCEQ”) Permit No. WQ0004314000, IV. Conditions of the Permit].
2. Failed to conduct the annual soil sampling from the root zone of the land application area and submit the results to the TCEQ Dallas/Fort Worth Regional Office, Water Quality Assessment Team, and the Compliance Monitoring Team by September 30, 2013 [30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0004314000, Special Provisions, Section K].
3. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal. Specifically, the flow meter used to measure flow from the lift station to the lagoon was inoperable [30 TEX. ADMIN. CODE §§ 305.125(1) and (5), 319.11(d), and TCEQ Permit No. WQ0004314000, Operational Requirements Nos. 1 and 5].
4. Failed to monitor effluent as specified in the permit. Specifically, the Respondent was calculating flow as a total per month and not on a daily basis during the monitoring periods ending September 30, 2012 through August 31, 2013 [30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No. WQ0004314000, Standard Permit Conditions, Monitoring Requirements No. 1].
5. Failed to collect and analyze samples at the required frequency. Specifically, samples for chloride, sodium, sodium adsorption, total phosphorous, and total dissolved solids were not collected and analyzed for the semiannual monitoring period ending April 30, 2013 [30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(A), 319.4 and 319.5(b), and TCEQ Permit No. WQ0004314000 Monitoring Requirements No. 1].

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***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective measures:

- a. By July 16, 2013, began collecting and analyzing samples for chloride, sodium, sodium adsorption, total phosphorous, and total dissolved solids for semi-annual monitoring; and
- b. By November 12, 2013, replaced the flow meter used to measure flow from the lift station to the lagoon.

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that soil and effluent samples are collected and analyzed;
- b. Within 45 days, submit written certification of compliance with Ordering Provision a.; and
- c. Within 90 days, submit written certification of compliance with the permitted effluent limitations of TCEQ Permit No. WQ0004314000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current effluent analysis results, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 48099**  
**Western Dairy Transport, L.L.C.**  
**RN101261097**  
**Docket No. 2014-0038-IWD-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Had Darling, Enforcement Division,  
Enforcement Team 1, MC 169, (512) 239-2520; Candy Garrett, Enforcement Division,  
MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** N/A

**Respondent:** James Dixon, Chief Operating Officer, Western Dairy Transport, L.L.C.,  
P.O. Box 590, Cabool, Missouri 65689-0590  
David Shelton, President, Western Dairy Transport, L.L.C., P.O. Box 590, Cabool,  
Missouri 65689-0590

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

**DATES**

**Assigned**

6-Jan-2014

**PCW**

2-Apr-2014

**Screening**

9-Jan-2014

**EPA Due**

## RESPONDENT/FACILITY INFORMATION

**Respondent** Western Dairy Transport, L.L.C.

**Reg. Ent. Ref. No.** RN101261097

**Facility/Site Region** 4-Dallas/Fort Worth

**Major/Minor Source** Minor

## CASE INFORMATION

**Enf./Case ID No.** 48099

**Docket No.** 2014-0038-IWD-E

**Media Program(s)** Water Quality

**Multi-Media**

**No. of Violations** 5

**Order Type** 1660

**Government/Non-Profit** No

**Enf. Coordinator** Had Darling

**EC's Team** Enforcement Team 1

**Admin. Penalty \$ Limit Minimum**

\$0

**Maximum**

\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

**Subtotal 1** \$13,750

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History**

10.0% Enhancement

**Subtotals 2, 3, & 7** \$1,375

**Notes**

Enhancement for one order containing a denial of liability and reduction for high performer classification.

**Culpability**

No

0.0% Enhancement

**Subtotal 4** \$0

**Notes**

The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments**

**Subtotal 5** -\$312

**Economic Benefit**

Total EB Amounts \$2,191

Approx. Cost of Compliance \$11,792

0.0% Enhancement\*

\*Capped at the Total EB \$ Amount

**Subtotal 6** \$0

**SUM OF SUBTOTALS 1-7**

**Final Subtotal** \$14,813

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

7.6%

**Adjustment** \$1,133

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 2 and 5.

**Final Penalty Amount** \$15,946

**STATUTORY LIMIT ADJUSTMENT**

**Final Assessed Penalty** \$15,946

**DEFERRAL**

20.0%

Reduction

**Adjustment** -\$3,189

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

**PAYABLE PENALTY**

\$12,757

Screening Date 9-Jan-2014

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PCW

Respondent Western Dairy Transport, L.L.C.

Policy Revision 3 (September 2011)

Case ID No. 48099

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101261097

Media [Statute] Water Quality

Enf. Coordinator Had Darling

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one order containing a denial of liability and reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 10%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 10%

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PCW

Respondent Western Dairy Transport, L.L.C.

Policy Revision 3 (September 2011)

Case ID No. 48099

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101261097

Media [Statute] Water Quality

Enf. Coordinator Had Darling

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Commission on Environmental Quality ("TCEQ") Permit No. WQ0004314000, IV. Conditions of the Permit

Violation Description Failed to comply with permitted effluent limits, as documented during an investigation conducted on October 29, 2013, and shown in the attached violation table.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	5.0%
Potential				

## &gt;&gt; Programmatic Matrix

Falsification				Percent
	Major	Moderate	Minor	
				0.0%

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 4 Number of violation days 357

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Four quarterly events are recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1,049

Violation Final Penalty Total \$5,921

This violation Final Assessed Penalty (adjusted for limits) \$5,921

# Economic Benefit Worksheet

Respondent Western Dairy Transport, L.L.C.  
Case ID No. 48099  
Reg. Ent. Reference No. RN101261097  
Media Water Quality  
Violation No. 1

Percent Interest 5.0  
Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	4-Sep-2012	10-Oct-2014	2.10	\$1,049	n/a	\$1,049

Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and to make any necessary repairs/adjustments to the Facility. Date required is the initial date of noncompliance. Final date is the expected date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$1,049

Screening Date 9-Jan-2014

Docket No. 2014-0038-IWD-E

PCW

Respondent Western Dairy Transport, L.L.C.

Policy Revision 3 (September 2011)

Case ID No. 48099

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101261097

Media [Statute] Water Quality

Enf. Coordinator Had Darling

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), and TCEQ Permit No. WQ0004314000, Special Provisions, Section K

Violation Description

Failed to conduct the annual soil sampling from the root zone of the land application area and submit the results to the TCEQ Dallas/Fort Worth Regional Office, Water Quality Assessment Team, and the Compliance Monitoring Team by September 30, 2013.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release			
Actual			
Potential		x	

Percent 5.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1

101 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1,007

Violation Final Penalty Total \$1,480

This violation Final Assessed Penalty (adjusted for limits) \$1,480

# Economic Benefit Worksheet

Respondent Western Dairy Transport, L.L.C.

Case ID No. 48099

Reg. Ent. Reference No. RN101261097

Media Water Quality

Violation No. 2

Percent Interest 5.0  
Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
Item Description No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$150	29-Oct-2013	10-Oct-2014	0.95	\$7	n/a	\$7
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational guidance and conduct employee training to ensure that soil and effluent samples are collected and analyzed. Date required is the investigation date. Final date is the expected date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	30-Sep-2013	29-Oct-2013	0.00	\$0	\$1,000	\$1,000
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct the required annual soil sampling of the land application area (\$1,000 per sampling). Date required is the date the sampling was due. Final date is the investigation date.

Approx. Cost of Compliance

\$1,150

TOTAL

\$1,007

Screening Date 9-Jan-2014

Docket No. 2014-0038-IWD-E

PCW

Respondent Western Dairy Transport, L.L.C.

Policy Revision 3 (September 2011)

Case ID No. 48099

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101261097

Media [Statute] Water Quality

Enf. Coordinator Had Darling

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and (5), 319.11(d), and TCEQ Permit No. WQ0004314000, Operational Requirements Nos. 1 and 5

Violation Description

Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal, as documented during an investigation conducted on October 29, 2013. Specifically, the flow meter used to measure flow from the lift station to the lagoon was inoperable.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release			
Actual			
Potential		x	

Percent 5.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1

14

Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the October 29, 2013, investigation date to the November 12, 2013, date of compliance.

## Good Faith Efforts to Comply

25.0% Reduction

\$312

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes

The Respondent achieved compliance on November 12, 2013.

Violation Subtotal \$938

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,144

This violation Final Assessed Penalty (adjusted for limits) \$1,144

# Economic Benefit Worksheet

Respondent Western Dairy Transport, L.L.C.

Case ID No. 48099

Reg. Ent. Reference No. RN101261097

Media Water Quality

Violation No. 3

Percent Interest 5.0

Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
Item Description No commas or \$

## Delayed Costs

Equipment	\$383	29-Oct-2013	12-Nov-2013	0.04	\$0	\$1	\$1
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$134	29-Oct-2013	12-Nov-2013	0.04	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to replace the existing flow meter that measures the flow from the lift station to the lagoon and ensure the meter is accurately calibrated. Date required is the investigation date. Final date is the date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$517

TOTAL

\$1

Screening Date 9-Jan-2014

Docket No. 2014-0038-IWD-E

PCW

Respondent Western Dairy Transport, L.L.C.

Policy Revision 3 (September 2011)

Case ID No. 48099

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101261097

Media [Statute] Water Quality

Enf. Coordinator Had Darling

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), and TCEQ Permit No. WQ0004314000, Standard Permit Conditions, Monitoring Requirements No. 1

Violation Description

Failed to monitor effluent as specified in the permit, as documented during an investigation conducted on October 29, 2013. Specifically, the Respondent was calculating flow as a total per month and not on a daily basis during the monitoring periods ending September 30, 2012 through August 31, 2013.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release			
Actual			
Potential		x	

Percent 5.0%

## &gt;&gt; Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 4

365

Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Four quarterly events are recommended for the monitoring periods ending September 30, 2012 through August 31, 2013.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$5,921

This violation Final Assessed Penalty (adjusted for limits) \$5,921

# Economic Benefit Worksheet

Respondent Western Dairy Transport, L.L.C.

Case ID No. 48099

Reg. Ent. Reference No. RN101261097

Media Water Quality

Violation No. 4

Percent Interest 5.0

Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
Item Description No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit for this violation is included with Violation No. 2.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

**Screening Date** 9-Jan-2014 **Docket No.** 2014-0038-IWD-E **PCW**  
**Respondent** Western Dairy Transport, L.L.C. *Policy Revision 3 (September 2011)*  
**Case ID No.** 48099 *PCW Revision August 3, 2011*  
**Reg. Ent. Reference No.** RN101261097  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Had Darling  
**Violation Number** 5

**Rule Cite(s)** 30 Tex. Admin. Code §§ 305.125(1) and (11)(A), 319.4 and 319.5(b), and TCEQ Permit No. WQ0004314000 Monitoring Requirements No. 1  
**Violation Description** Failed to collect and analyze samples at the required frequency, as documented during an investigation conducted on October 29, 2013. Specifically, samples for chloride, sodium, sodium adsorption, total phosphorous, and total dissolved solids were not collected and analyzed for the semiannual monitoring period ending April 30, 2013.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

**OR**  

	Major	Moderate	Minor
<b>Release</b>			
Actual			
Potential		x	

**Percent** 5.0%

**>> Programmatic Matrix**

	Major	Moderate	Minor
<b>Falsification</b>			

**Percent** 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 88 Number of violation days

mark only one with an x  

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,250

One single event is recommended.

**Good Faith Efforts to Comply**

**0.0%** Reduction  
 Before NOV NOV to EDPRP/Settlement Offer  
 Extraordinary  
 Ordinary  
 N/A x (mark with x)

\$0

Notes

The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,250

**Economic Benefit (EB) for this violation**

**Estimated EB Amount** \$133

**Statutory Limit Test**

**Violation Final Penalty Total** \$1,480

**This violation Final Assessed Penalty (adjusted for limits)** \$1,480

# Economic Benefit Worksheet

Respondent Western Dairy Transport, L.L.C.

Case ID No. 48099

Reg. Ent. Reference No. RN101261097

Media Water Quality

Violation No. 5

Percent Interest 5.0

Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount

Item Description No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit for this violation is included with Violation No. 2.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$125	20-Mar-2013	16-Jul-2013	1.24	\$8	\$125	\$133
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct chloride, sodium, sodium adsorption, total phosphorous and total dissolved solids sampling (\$25 per parameter). Date required is the date analysis was due. Final date is the date of compliance.

Approx. Cost of Compliance

\$125

TOTAL

\$133

**Western Dairy Transport, L.L.C.**  
**TPDES Permit No. WQ0004314000**  
**Docket No. 2014-0038-IWD-E**

Effluent Violation Table							
Monitoring Date	Permitted Effluent Limits	Monitoring Date	Permitted Effluent Limits	Monitoring Date	Permitted Effluent Limits	Monitoring Period	Permitted Effluent Limits
	Oil and Grease Daily Maximum Concentration Limit = 15 mg/L		Oil and Grease Daily Maximum Concentration Limit = 15 mg/L		Oil and Grease Daily Maximum Concentration Limit = 15 mg/L		Daily Average Flow Limit = 2,000 gpd
September 4, 2012	61.6	January 2, 2013	46.4	May 14, 2013	19.1	June 2013	2,665
September 11, 2012	44.1	January 8, 2013	15.2	May 21, 2013	21.2	July 2013	3,082
September 18, 2012	91	January 15, 2013	19.2	May 28, 2013	26.6	August 2013	2,031
September 25, 2012	20.6	January 22, 2013	37.9	May 29, 2013	20.2		
October 2, 2012	99.2	January 29, 2013	21.7	June 6, 2013	18.9		
October 9, 2012	56.4	February 5, 2013	25.3	June 11, 2013	39.7		
October 16, 2012	46.8	February 12, 2013	29.8	June 18, 2013	26.8		
October 23, 2012	109.3	February 19, 2013	114	July 2, 2013	27.8		
October 30, 2012	36.4	February 26, 2013	23.2	July 9, 2013	20.3		
November 6, 2012	36.3	March 5, 2013	17.4	July 16, 2013	41.1		
November 13, 2012	43.9	March 19, 2013	16.2	July 23, 2013	64.9		
November 20, 2012	42.5	March 26, 2013	34.6	August 6, 2013	44.6		
November 27, 2012	47.2	April 2, 2013	36.9	August 13, 2013	34.6		
December 4, 2012	157	April 9, 2013	17.8	August 20, 2013	33.4		
December 11, 2012	25.5	April 16, 2013	23.1	August 27, 2013	51.3		
December 18, 2012	23.2	April 30, 2013	20.5				
December 26, 2012	17.4	May 7, 2013	71.8				

mg/L = milligrams per liter  
gpd = gallons per day





# Compliance History Report

**PUBLISHED** Compliance History Report for CN603812041, RN101261097, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

<b>Customer, Respondent, or Owner/Operator:</b>	CN603812041, Western Dairy Transport, L.L.C.	<b>Classification:</b> HIGH	<b>Rating:</b> 0.00
<b>Regulated Entity:</b>	RN101261097, MILK TRANSPORT SERVICES	<b>Classification:</b> UNCLASSIFIED	<b>Rating:</b> -----
<b>Complexity Points:</b>	5	<b>Repeat Violator:</b>	NO
<b>CH Group:</b>	14 - Other		
<b>Location:</b>	771 County Road 176 (Smith Springs Road), approximately 0.25 mile northeast of the intersection of United States Highway 281 and County Road 176, north of Stephenville, Erath County, Texas		
<b>TCEQ Region:</b>	REGION 04 - DFW METROPLEX		
<b>ID Number(s):</b>			
<b>PUBLIC WATER SYSTEM/SUPPLY REGISTRATION</b>	0720040	<b>WASTEWATER PERMIT</b>	WQ0004314000
<b>WASTEWATER EPA ID</b>	TX0131563	<b>PETROLEUM STORAGE TANK REGISTRATION</b>	REGISTRATION 72833
<b>WATER LICENSING LICENSE</b>	0720040		
<b>Compliance History Period:</b>	September 01, 2008 to August 31, 2013	<b>Rating Year:</b>	2013
		<b>Rating Date:</b>	09/01/2013
<b>Date Compliance History Report Prepared:</b>	February 19, 2014		
<b>Agency Decision Requiring Compliance History:</b>	Enforcement		
<b>Component Period Selected:</b>	February 19, 2009 to February 19, 2014		
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>			
<b>Name:</b>	Herbert Darling	<b>Phone:</b>	(512) 239-2520

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) If **YES** for #2, who is the current owner/operator? Western Dairy Transport, L.L.C. OWNER OPERATOR since 10/1/2010  
Western Dairy Transport, L.L.C. OWNER OPERATOR since 4/10/2008
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? Milk Transport Services, L.P., OWNER OPERATOR, 3/12/2002 to 9/30/2010
- 5) If **YES**, when did the change(s) in owner or operator occur? 10/1/2010

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

- 1 Effective Date: 03/20/2010 ADMINORDER 2009-1266-IWD-E (1660 Order-Agreed Order With Denial)  
Classification: Major  
Citation: TWC Chapter 26 26.121  
Rqmt Prov: TPDES Permit No. WQ0004314000 PERMIT  
Description: Failure to operate the facility with the proper permit.

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
WESTERN DAIRY TRANSPORT,  
L.L.C.  
RN101261097**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2014-0038-IWD-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Western Dairy Transport, L.L.C. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a bulk milk transport services terminal located at 771 County Road 176 (Smith Springs Road), approximately 0.25 mile northeast of the intersection of United States Highway 281 and County Road 176, north of Stephenville, Erath County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 25, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Fifteen Thousand Nine Hundred Forty-Six Dollars (\$15,946) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twelve Thousand Seven Hundred Fifty-Seven Dollars (\$12,757) of the administrative penalty and Three Thousand One Hundred Eighty-Nine Dollars (\$3,189) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. By July 16, 2013, began collecting and analyzing samples for chloride, sodium, sodium adsorption, total phosphorous, and total dissolved solids for semi-annual monitoring; and
  - b. By November 12, 2013, replaced the flow meter used to measure flow from the lift station to the lagoon.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No. WQ0004314000, IV. Conditions of the Permit, as documented during an investigation conducted on October 29, 2013 and shown in the table below:

Effluent Violation Table							
Monitoring Date	Permitted Effluent Limits	Monitoring Date	Permitted Effluent Limits	Monitoring Date	Permitted Effluent Limits	Monitoring Period	Permitted Effluent Limits
	Oil and Grease Daily Maximum Concentration Limit = 15 mg/L		Oil and Grease Daily Maximum Concentration Limit = 15 mg/L		Oil and Grease Daily Maximum Concentration Limit = 15 mg/L		Daily Average Flow Limit = 2,000 gpd
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December 26, 2012	17.4	May 7, 2013	71.8				

mg/L = milligrams per liter  
gpd = gallons per day

2. Failed to conduct the annual soil sampling from the root zone of the land application area and submit the results to the TCEQ Dallas/Fort Worth Regional Office, Water Quality Assessment Team, and the Compliance Monitoring Team by September 30, 2013, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0004314000, Special Provisions, Section K, as documented during an investigation conducted on October 29, 2013.
3. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (5), 319.11(d), and TCEQ Permit No. WQ0004314000, Operational Requirements Nos. 1 and 5, as documented during an investigation conducted on October 29, 2013. Specifically, the flow meter used to measure flow from the lift station to the lagoon was inoperable.
4. Failed to monitor effluent as specified in the permit, in violation of 30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No. WQ0004314000, Standard Permit Conditions, Monitoring Requirements No. 1, as documented during an investigation conducted on October 29, 2013. Specifically, the Respondent was calculating flow as a total per month and not on a daily basis during the monitoring periods ending September 30, 2012 through August 31, 2013.
5. Failed to collect and analyze samples at the required frequency, as documented during an investigation conducted on October 29, 2013, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(A), 319.4 and 319.5(b), and TCEQ Permit No. WQ0004314000 Monitoring Requirements No. 1, as documented during an investigation conducted on October 29, 2013. Specifically, samples for chloride, sodium, sodium adsorption, total phosphorous, and total dissolved solids were not collected and analyzed for the semiannual monitoring period ending April 30, 2013.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Western Dairy Transport, L.L.C., Docket No. 2014-0038-IWD-E" to:

2. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that soil and effluent samples are collected and analyzed.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions No. 2.a, as described in Ordering Provision No. 2.d below.
  - c. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TCEQ Permit No. WQ0004314000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current effluent analysis results, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.
  - d. The certifications required by Ordering Provisions Nos. 2.b. and 2.c shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Marcia J.  
For the Executive Director

7/24/14  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

James C. Dixon  
Signature

4/29/14  
Date

JAMES C DIXON  
Name (Printed or typed)  
Authorized Representative of  
Western Dairy Transport, L.L.C.

C.O.O  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.